IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEALNO.1101 OF 2005

Narayan Anna Dhumal (Dead)
1/1 Ramchandra Narayan Dhumal & ors...Appellants

Versus

Gulab Chand Shaikalgar ..Respondents

Mr.S.M.Sabrad for appellants

CORAM : P.V.KAKADE, J.

DATE : 4TH OCTOBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by District Judge, Sangli dated 19.1.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Vita dismissing the plaintiffs' suit.

2. I have heard the learned counsel for the

appellants. Perused the record.

3. The plaintiffs filed the suit for perpetual injunction against the defendant in respect of land Survey No.83/2 and 83/4 situated at Vita. The plaintiffs came with the case that they were owner and possession of the suit property and defendant had encroached upon his land and hence the suit for perpetual injunction came to be filed without seeking any declaration. The defendant contested the suit on various grounds denying the allegations made by the plaintiffs and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs failed to prove his title as well as possession over the suit property and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in

this appeal. The appellants brought to my notice that there was Regular Civil Suit No.312 of 1937 between the parties and the present defendant was plaintiff in that suit and had filed a Pursis Exh.53, which showed that father of the present defendant had admitted the ownership as well as possession of the plaintiff over 24 gunthas land and therefore, the suit was withdrawn. However, it is to be noted that the Pursis Exh.53 filed by the father of the defendant and one of the defendant in that suit there is no reference in the Pursis about further encroachment committed by the plaintiffs over the land of the defendant to the extent of 16 gunthas and 1 gunthas and therefore, the lower court had stated that measurement map Exh.8 was duly proved in R.C.S No.317 of 1937 and therefore, consequently, it was held that the plaintiffs cannot rely upon the measurement map Exh.8 which was not proved. This finding was upheld by the lower appellate court and observed that withdrawal of the pursis shows that the plaintiff of that suit submitted in that suit that he was not claiming any ownership right in respect of the suit portion of Survey No.483, Hiss No.2 and as per the mutation entry of 1938 the area of Survey No.483, Hiss No.2 was 1 acre and 18 gunthas and one Chand Shikalgar was shown to be the

owner of entire portion and this revenue record was continued till the date of the present suit. Under the circumstances, the said so called admission of the suit in the year 1938 is of no avail for the plaintiffs to establish their claim as alleged.

5. Under the circumstances, both the courts have concurrently held that the plaintiffs have failed to establish their title as well as possession over the suit property. I do not propose to interfere with the findings recorded by both the courts, being the findings of issue of facts, especially when there is no substantial question of law involved.

. Under the circumstances the appeal is devoid of any merits and stands dismissed.